

In the Matter of the 2018 Long-Term )  
Forecast Report on behalf of Ohio Power ) Case No. 18-501-EL-FOR  
Company and Related Matters. )

## I. INTRODUCTION

Ohio Power Company (“AEP”) is taking the first step toward government approval of consumer subsidies for 900 monopoly megawatts of renewable energy power plants despite the General Assembly’s deregulation of power plants in Ohio. The PUCO Staff recognized the importance of this proceeding and filed a motion to allow parties more time to pursue the numerous issues raised in AEP’s filings.<sup>1</sup> OCC generally supports the PUCO Staff’s approach but has also proposed a definitive procedural schedule.<sup>2</sup> AEP and Natural Resources Defense Council (“NRDC”) oppose the PUCO Staff proposal.<sup>3</sup>

Though AEP and NRDC both admit that this case (and Case Nos. 18-1392-EL-RDR and 18-1393-EL-ATA) presents novel and complex issues,<sup>4</sup> each still advocate for a

<sup>1</sup> PUCO Staff Motion for Hearing (Sept. 21, 2018).

<sup>2</sup> OCC Opposition to AEP's Proposed Schedule and Memorandum in Response to the PUCO Staff's Motion for a Hearing (Oct. 9, 2018).

<sup>3</sup> See AEP's Memorandum Contra at 2 (Oct. 9, 2018); NRDC's Limited Memorandum Contra at 2 (Oct. 9, 2018).

<sup>4</sup> *Id.*

very quick procedural schedule, opposing Staff's proposed schedule. But they do so without considering upcoming, important regulatory developments from the Federal Energy Regulatory Commission ("FERC") that the PUCO should consider here. They also do so on the questionable assertion that available tax credits will evaporate within a short period of time.

## **II. RECOMMENDATIONS**

The PUCO should reject both AEP's and NRDC's proposed schedules in favor of the alternative schedule OCC proposed in its Memorandum Contra.<sup>5</sup> OCC's proposed schedule is consistent with the PUCO Staff's proposed schedule in that it allows parties time to develop a complete record in this complicated and relatively novel case.

### **A. The PUCO should not go forward until FERC rules on power plant subsidies.**

AEP proposes that the PUCO hear this case in November.<sup>6</sup> NRDC proposes that the case be heard in January.<sup>7</sup> Both of these proposals, however, would deprive the PUCO of the ability to consider important changes that FERC is considering that could have a material impact on costs that consumers will pay for renewable power.

FERC is considering proposals to limit subsidized power plants (including to limit subsidized renewable generation) from distorting the wholesale electricity market

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<sup>5</sup> OCC Memorandum Contra.

<sup>6</sup> Motion of Ohio Power Company to Consolidate Proceedings and Request for Expedited Ruling (Sept. 27, 2018).

<sup>7</sup> NRDC's Limited Memorandum Contra at 2 (Oct. 9, 2018).

and increasing the charges consumers pay for electricity. PJM has asked FERC to issue a final order in the case by March 15, 2019.<sup>8</sup>

FERC's decision could materially impact the revenue that AEP would ultimately derive from the PJM market. Under AEP's proposal, the renewable revenues would be netted against the cost to operate the renewable energy power plants. It is the netting of the costs and revenues from the renewable power plants that would determine whether AEP's consumers receive a credit or a charge under AEP's proposed renewable generation rider. According to AEP, the cost of the renewable power to customers is a crucial element in determining whether it is reasonable for the renewable power plants to be built and for AEP to charge its customers to subsidize renewable power.

To properly evaluate the cost to consumers for the proposed renewable power plants, the PUCO will need to consider FERC's ruling, which will affect revenues received under the PJM wholesale market. As the PUCO Staff recommends, the PUCO should schedule a hearing within ninety days of September 19, 2018, but that hearing should be called and continued. The hearing should be continued until after FERC's ruling. The PUCO should order that within 30 days after FERC's ruling, AEP should file updates to its application and testimony to account for FERC's decision. An evidentiary hearing should be set no sooner than 90 days after AEP files its updates. This measured approach is necessary in this case to protect consumers from paying unjust and unreasonable rates for monopoly, instead of market, megawatts.

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<sup>8</sup> FERC Docket No. EL18-178-000, EL16-49-00, EL18-1314-000, Answer of PJM Interconnection, L.L.C. at 3 (Aug. 9, 2018).

If FERC adopts PJM's recommended timing, the FERC order would be issued around March 15, 2019. AEP's updated filings in this case would be due around April 14, 2019. And the hearing would begin no sooner than July 13, 2019. This approach would give parties more opportunity to develop a factual and complete record on which the PUCO can base its decision.

**B. The PUCO should not pursue an expedited hearing schedule for fear of losing tax credits.**

Both AEP and NRDC oppose the PUCO Staff Motion based on the availability of tax credits for renewable energy production. AEP asserts that the Motion should be rejected because there is an "urgent need – based on the impending expiration of federal tax credits – to proceed with deliberate speed here."<sup>9</sup> NRDC says that "a portion of the value of the projects predicated on this need filing provide is derived from the tax credits available."<sup>10</sup>

But AEP's own testimony confirms that the availability of a limited and uncertain amount of tax credits should not drive the schedule under which this important, complex case is decided. AEP Witness Allen explains that the production tax credit is available for every kilowatt-hour of energy "*that is produced by a wind generator[.]*"<sup>11</sup> The investment tax credit is available "on the basis of qualified energy property placed in service during the tax year."<sup>12</sup> AEP itself qualifies for neither tax credit, according to its

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<sup>9</sup> AEP's Memorandum Contra at 2.

<sup>10</sup> NRDC's Limited Memorandum Contra at 3.

<sup>11</sup> See Direct Testimony of William A. Allen (September 19, 2019) at 14:6-9 (*italics added*).

<sup>12</sup> See *id.* at 14.

own testimony, as AEP will neither own nor operate the renewable generation facilities.<sup>13</sup> It has simply entered into a contract to buy the facilities' output.<sup>14</sup> Without evidence showing how consumers will directly benefit from the tax credits, it makes little sense to expedite matters solely on account of the obtaining tax credits.

Further, any tax benefits associated with the proposed renewable energy projects would be equally available, according to AEP's own testimony, were this case decided under a procedural schedule fair to all stakeholders rather than AEP's and NRDC's expedited schedule. According to AEP Witness Allen, the tax credits are available for projects once construction begins.<sup>15</sup> Realistically, there is no chance that the PUCO could hear this case, issue a decision, and construction begin in 2018 – even under AEP's and NRDC's proposed schedules. So considering what tax credits would be available for projects on which construction were to begin in 2018 is useless.

But there are still tax credits available for renewable projects on which construction begins in 2019 or later.<sup>16</sup> Thus, according to AEP's own testimony, there is absolutely no benefit from shoe-horning this important, complex case into 2018 based on the availability of tax credits – construction on the projects will not realistically begin in 2018, and tax credits are available for projects on which construction begins in 2019.

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<sup>13</sup> See Case No. 18-1392-EL-RDR, Application (September 27, 2018) at para. 2.

<sup>14</sup> See *id.*

<sup>15</sup> See Allen Testimony at 14-15.

<sup>16</sup> See *id.*

**C. The magnitude of power plant subsidies consumers are being asked to pay demands a deliberative approach to this case as recommended by Staff and OCC.**

If the PUCO does not await FERC's ruling, it should nonetheless reject the procedural schedules requested by AEP and NRDC. In that instance, the PUCO should call and continue the hearing as recommended by the PUCO Staff.<sup>17</sup> And then early in 2019, after time for review and initial discovery, the PUCO should invite proposals from the parties for a case schedule and fair process. Adoption of a fair process—in this case involving hundreds of millions of dollars of power plant subsidies to be paid by 1.5 million captive monopoly customers—is essential for the millions of Ohioans who depend on market megawatts, not monopoly megawatts, to bring about lower prices and higher innovation.

The current case, which could involve hundreds of millions of dollars of power plant subsidies to be paid by 1.5 million captive monopoly customers over the next twenty years, cannot reasonably be expected to be resolved in a mere 90 days, as AEP proposes. Nor is it possible to resolve these issues under the slightly better schedule proposed by NRDC. AEP's and NRDC's proposed expedited hearing process in an important case like this would be an unfair process for consumers.

### **III. CONCLUSION**

The PUCO should reject AEP's and NRDC's requests for a procedural schedule that would not allow parties a reasonable opportunity to develop a factual record and make recommendations to the PUCO. The PUCO should find, as the PUCO Staff

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<sup>17</sup> Motion at 1.

suggests, that AEP's proposal warrants a deliberative process involving research, discovery, and due process for all parties. OCC's proposed schedule does just that. Ohio consumers deserve a fair process. That fair process must allow for meaningful participation by all parties and the development of a complete record of all relevant facts and opinions. Accordingly, the PUCO should adopt the procedural schedule urged by OCC, consistent with its own Staff's proposal.

Respectfully submitted,

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*/s/ Maureen R. Willis*

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the persons stated below  
via electronic transmission, this 16th day of October 2018.

/s/ Maureen R. Willis

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**10/16/2018 4:59:18 PM**

**in**

**Case No(s). 18-0501-EL-FOR**

Summary: Reply Reply to Ohio Power Company's Memorandum Contra and The Natural Resources Defense Council's Limited Memorandum Contra the Staff of the Public Utilities Commission Motion for a Hearing by The Office Of The Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Willis, Maureen R Mrs.